

MEMO# 18610

March 3, 2005

INSTITUTE LETTER REGARDING CIRCULAR 230 PROPOSED REGULATIONS

[18610] March 3, 2005 TO: FIXED-INCOME ADVISORY COMMITTEE No. 8-05 MONEY MARKET FUNDS ADVISORY COMMITTEE No. 6-05 TAX MEMBERS No. 4-05 RE: INSTITUTE LETTER REGARDING CIRCULAR 230 PROPOSED REGULATIONS The Treasury Department ("Treasury") recently issued final and proposed regulations governing practice before the Internal Revenue Service that are contained in a document known as "Circular 230."¹ Among other things, the revisions to Circular 230 modify the rules for tax shelter opinions by requiring certain opinions called "covered opinions" to include additional disclosures. "State or local bond opinions" are expressly excluded from the definition of "covered opinion" and are not required to include the additional disclosures set forth in the regulations. Instead, counsel must separately provide written advice to the issuer in the transcript of proceedings or similar document. The attached March 1, 2005 Institute letter generally supports the treatment given to "State or local bond opinions" by the Proposed Regulations. The Institute urges Treasury to include certain other transactions within the definition of "State or local bond opinion," including (1) "no adverse effect" opinions; (2) tender option bond ("TOB") programs and TOB "no adverse effect" opinions; and (3) 501(c)(3) bond opinions and other qualified bond opinions. These types of opinions are provided in connection with investments that are similar to tax exempt bonds and comprise a significant part of the municipal bond market. Subjecting these investments to the additional disclosure requirements for "covered opinions" is inconsistent and will disrupt the market. The Institute also requests clarification that the definition of "State or local bond opinion" includes written advice in the form of electronic communications. Lisa Robinson Associate Counsel Attachment (in .pdf format) 1 See Institute Memorandum to Fixed-Income Advisory Committee No. 14-04, Money Market Funds Advisory Committee No. 15-04 and Tax Committee No. 39-04 (18351) dated December 20, 2004; and Institute Memorandum to Tax Members No. 50-04 (18356) dated December 20, 2004. 2 Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 18610, or call the ICI Library at (202) 326-8304 and request the attachment for memo 18610.